

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

February 5, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated January 14, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We submit the following request for a general information letter based on the following facts.

General facts: the taxpayer is in the business of building models, dioramas, environments, exhibits and creating murals, primarily for museums. These are the actual exhibits, not the case fixtures. The taxpayer is well known in its field for its creations. Museums employ the taxpayer specifically for its engineering skill, artistic ability, expertise and knowledge to design and build the exhibits.

We request a general information letter that the taxpayer is engaged primarily in a service occupation. We believe the tests stated under Illinois Regulation 130.2115 apply in determining whether the taxpayer is engaged primarily in a service occupation. The tests set forth under this regulation are as follows:

'The seller of a special machine, tool, die, jig, pattern, gauge or similar items is engaged primarily in a service occupation, rather than in the business of selling tangible personal property if all of the following tests are met:

- 1) the purchaser employs the seller primarily for his engineering or other scientific skill to design and produce the property on special order for the purchaser and to meet the particular needs of the purchaser;
- 2) the property has use or value only for the specific purpose for which it is produced; and
- 3) the property has use or value only to the purchaser.'

Following these guidelines, we submit the following information:

1) Museums employ the taxpayer for its engineering and other skills, to design and create its dioramas, exhibits, models, murals, etc.. An exhibit is designed and produced for a specific museum and for a specific purpose. The exhibits are not inventoried nor stocked and they cannot be purchased at retail from any catalog. Materials to be used in creating an exhibit are purchased for a specific job. There is no mass production of these exhibits. There is no inventory of items from which to create the order. The exhibit is specifically built to meet a specific request from the particular museum that orders it. The taxpayer makes a substantial contribution to the design and creation of the exhibit.

2) The diorama, exhibit, model, mural, etc. is useful only as an exhibit in the museum which orders it. It is specifically created to be used as an exhibit in a specific museum. There is no value to the exhibit other than as used in the museum.

3) As a whole, the diorama, exhibit, model, mural, etc. only has use in the museum for whom it was created. Once the museum decides to replace the exhibit, the old item is usually destroyed so that a new one can be put in its place.

While Regulation 130.2115 states it applies to special machines, dies, tools, etc., we believe the tests enumerated in the regulation apply to the taxpayer's business described above. An example of a taxpayer that used the tests set forth in Regulation 130.2115 can be found in a PLR issued to a fabricator of roof truss systems and wall panels. The roof truss system and wall panels seem to fall outside of the specifically identified items above (see the attached PLR 97-0016).

The PLR relied on the three tests provided in the regulation in determining the status of the taxpayer. This PLR states the fabricator was selling a service because: 1) the taxpayer was specifically employed for its engineering skills to design and produce the roof truss systems; 2) the system had use and value only for the specific purpose for which it was produced; and 3) it was only for the specific purchaser.

Again, we believe the taxpayer meets the three tests outlined in the regulation based on the above information. Therefore, they are engaged primarily in a service occupation and thus are subject to the Service Occupation Tax.

Please provide guidance via a general information letter.

If you have any further questions, please contact our office.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

When persons produce items for sale, they will be subject to the Retailers' Occupation Tax if the items are of a stock or standard nature, as would be the case with mass-produced reference books or books that although produced according to prescribed specifications, may be sold to the public. When a special order or custom item is produced, Service Occupation Tax will be due upon sale. If the

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items are produced for the exclusive use of a particular customer and hold no utility to another party, they will be considered custom. Therefore, they will be subject to Service Occupation Tax instead of Retailers' Occupation Tax. However, please note that if 50 or more duplicates of a custom item are created, the Retailers' Occupation Tax will apply. See 86 Ill. Adm. Code 130.2115(4), enclosed.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.